UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

UNITED STATES OF AMERICA

- v. -

JOSE RODRIGUEZ,

Defendant.

---X

S2 15 Cr. 95 (AJN)

SENTENCING MEMORANDUM OF THE UNITED STATES OF AMERICA

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PRELIMINARY STATEMENT

The defendant in this case, Jose Rodriguez, is scheduled to be sentenced on March 23, 2017. The Government respectfully submits this memorandum in advance of that sentencing and in response to Rodriguez's sentencing memorandum, which requests a sentence of 60 months' imprisonment—the minimum required by law. For the reasons that follow, the Government disagrees and respectfully requests that the Court impose a sentence within the range of 106 to 117 months' imprisonment to which the parties stipulated in their Plea Agreement.[1] Rodriguez was a leader of a violent street gang—the Big Money Bosses ("BMB" or the "Gang")—with which he sold marijuana and carried guns. Rodriguez's requested sentence would not achieve the purposes of the statutory sentencing factors, especially the need to reflect the seriousness of the offense and Rodriguez's history and characteristics, provide just punishment, and afford adequate deterrence to criminal conduct. A sentence within the stipulated Guidelines range is

[1] This range differs from the range calculated by the United States Probation Office in the Presentence Report (the "PSR"). The Government is prepared to address this discrepancy upon inquiry by the Court. *See United States* v. *Kilpatrick*, -- Fed. App'x --, 2016 WL 6518802, at *3 (2d Cir. Nov. 1, 2016) (holding that Government breached plea agreement by bringing an error in the parties' Guidelines calculation to the attention of the Court).

necessary to send the message that leading a violent street gang—and, especially, carrying guns—will be met with serious consequences.

I. Procedural History

On April 27, 2016, the S2 Indictment in this case was unsealed, charging 63 members and associates of BMB with: (1) racketeering conspiracy, in violation of Title 18, United States Code Section 1962; (2) narcotics conspiracy, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A), and 846; (3) narcotics distribution, in violation of Title 21, United States Code, Section 860; and/or (4) firearms discharge, in violation of Title 18, United States Code, Section 924(c)(1)(A)(iii).

On December 15, 2016, Rodriguez pled guilty to Counts One and Four of the S2 Indictment in this case, which charged him with racketeering conspiracy, in violation of Title 18, United States Code, Section 1962(d), and the lesser included offense of firearms possession, in violation of Title 18, United States Code, Section 924(c)(1)(A)(i). (PSR ¶ 8.)

II. Offense Conduct

A. Background

Beginning in December 2014, the New York City Police Department, the Drug Enforcement Administration, Homeland Security Investigations, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives conducted an investigation into two rival street gangs—BMB and the 2Fly YGz (“2Fly”)—that were operating in the Bronx, New York. The investigation revealed that since at least in or about 2007, up until in or about 2016, members of BMB and 2Fly were involved in a variety of racketeering acts, including murders, attempted murders, robberies, narcotics trafficking, bank fraud, and counterfeit currency offenses.

B. BMB

The structure of BMB is described accurately in the PSR.

BMB was a subset of the "Young Bosses," or "YBz" street gang, which operates throughout the New York City area. BMB—whose members also sometimes refer to themselves as the "Money Making Mafia" or "Triple M"—operated primarily on White Plains Road from 215th Street to 233rd Street in the Bronx, which is a long stretch of road under a subway train overpass that is hedged on each side by single-family homes and local commercial establishments. BMB's narcotics trafficking activity was based principally in the vicinity of White Plains Road and 224th Street, an open-air drug spot that was referred to by gang members as the "Forts." BMB members sold drugs and down White Plains Road, however, including at a spot on 219th Street and a house on 230th Street. BMB members sold crack cocaine, marijuana, and prescription pills, including Percocet pills (i.e., oxycodone). BMB members kept firearms at each of these White Plains Road locations. BMB members also operated a drug spot on Boston Road and Eastchester Road in the Bronx, which they refer to as "B Road." BMB members who worked principally at the B Road spot typically refer to themselves as "Blamma." Generally speaking, BMB members were encouraged to continue openly "jacking," or proclaiming their membership in the gang, and many did so not only in person but also through social media websites such as Facebook.

In addition to its narcotics trafficking, BMB members and associates engaged in acts of violence, including shootings, stabbings, and gang assaults; these acts of violence protected the power of the gang, deterred attacks from rivals, and secured the gang's territories and drug spots. Moreover, members who engaged in a sufficient amount of violence could earn a leadership position, which was referred to as a "Big Suit." Members with "Big Suit" status were further subcategorized as, among other things, "Burberry Suits," "Louis Suits," "Gucci Suits," Ferragamo Suits," and "Sean John Suits," in order to signify their relative rank in the gang. Among other things, a BMB member with "Big Suit" status had the authority to recruit other individuals into the gang. Two of the highest-ranking "Big Suits" in BMB were NICO BURRELL, a/k/a "Zico Nico," and DOUGLAS MCLARTY, a/k/a "Q Don." Both BURRELL and MCLARTY enhanced their status in the gang, in part, by committing attempted murders when they were each juveniles.

Members of BMB rose in status and rank within the gang not only by engaging in acts of violence, but also by maintaining their membership in the gang for a long period of time. Members who were loyal associates for a substantial amount of time are referred to as "Day One Niggas," meaning that they have been associating with the gang since its earliest days. For example, in a posting on Facebook on July 7, 2013, BMB member RASHEID BUTLER, a/k/a "Rah," wrote: "i love my Day1 Niggas that was here since this #TripleM Shit 1ST STARTED." Similarly, BMB leader NICO BURRELL, a/k/a "Zico Nico," discusses the "Day One" concept in a rap video posted on YouTube in December 2015 and entitled "Live From Gutter." In the video, BURRELL raps, "No new niggas, only day one / I know they ain't tellin' if that day come," after which another rapper repeats in the background, "no snitchin.'"

BMB has, more generally, developed a gang norm against "snitchin,'" or cooperating with law enforcement. For example, a BMB associate posted on Facebook on July 20, 2011, "Like QuDOn Said 'No Snitchin Policy'"; the reference to "QuDOn" is a reference to MCLARTY, who is one of BMB's leaders and whose alias is "Q Don." BMB's norm against "snitchin'" was fostered through YouTube videos and social media postings, including postings in which gang members are praised for their refusals to cooperate with law enforcement in particular instances. The norm is also enforced through disparagement of and threats of violence against BMB members who are suspected of having violated the norm by cooperating. During the course of this investigation, law enforcement learned of at least one instance in which a BMB member's home was fired upon because he made a statement to law enforcement about individuals with whom he had committed a robbery. During another instance, the child of a suspected cooperator in this case was threatened and spat upon in the street. The norm against cooperation facilitates the gang's criminal enterprise and is one of the reasons why members of BMB tend to commit their robberies and fraud offenses with other members of BMB.

Many of the specific acts of violence committed by BMB members related to its longstanding rivalry with 2Fly, which is based principally in the nearby Eastchester Gardens public housing development ("Eastchester Gardens"), but which also has members who live in the "Valley" area just east of BMB's "B Road" spot on Boston Road and Eastchester Road. BMB also has developed rivalries with other street gangs in the northern Bronx, including the "Young Shooter Gang," or "YSGz," which is based in the Edenwald public housing development ("Edenwald"), and the "Slut Gang," which is based in the Boston-Secor public housing development ("Boston-Secor"). In connection with these rivalries, BMB members developed a practice of "mobbing," meaning to gather in large groups and travel to the base of operations of a rival gang to engage in violence there. Members of rival gangs also sometimes went "mobbing" and attack or attempt to attack BMB at its bases of operations. Videos of "mobbing" incidents were posted on YouTube. The close proximity of the BMB, 2Fly, YSGz, and Slut Gang bases of operations—all of which are in or on the border of the New York City Police Department's 47th Precinct—contributed to the frequency of acts of violence.

In addition to acts of violence, members and associates of BMB promoted their gang and disparaged rival gang members by highlighting a distinguishing feature of BMB: it is not based in a housing development, as are its principal rivals 2Fly (in the Eastchester Gardens), YSGz (in Edenwald), and the Slut Gang (in Boston-Secor). As noted above, BMB principally operated along White Plains Road, a long stretch of road hedged on each side by single-family homes and local commercial establishments. The name of the gang ("Big Money Bosses") and the other allusions to wealth that the gang employs (for example, the brand-name clothing retailers used to identify leadership positions) all serve to underscore this difference. In addition, members and associates of BMB have publicly mocked the living conditions of the housing developments in which many of their rivals live. For example, in a Facebook post on July 10, 2014, BMB member DONQUE TYRELL, a/k/a "Polo Rell," posted a photograph of a young child laying on a bed and covered with cockroaches, with the caption "MEANWHILE IN EDENWALD." In connection with the posting of this picture, TYRELL wrote, "Dirty ass project," followed by six smiley-face "emoticons." Similarly, in a Facebook posting on May 28, 2014, BMB member MASHUD YODA, a/k/a "Papa Ola," writes, "No Lie ECG [*i.e.*, the Eastchester Gardens] The Dirtiest PROJECTS UPTOWN . . . . Like OBAMA Said CHANGE But I Guess He forgot Bout ECG !!"

Consistent with this feature of BMB, members and associates of the gang engaged not only in narcotics distribution and robberies to enrich and distinguish its members from rivals, but also engaged in a variety of frauds, including bank fraud and counterfeit currency offenses. To perpetrate some of these fraud offenses, BMB members and associates often employed their girlfriends and female acquaintances.

C. Rodriguez's Role

Rodriguez was a leader of BMB, authorized to recruit new members and order acts of violence. Rodriguez was also a marijuana dealer. On July 1, 2015, NYPD officers saw Rodriguez selling narcotics to multiple unknown buyers at the "Forts," and when the officers arrested Rodriguez, he was found to be in possession of seven small bags of marijuana. Further, on October 15, 2009, Rodriguez was arrested in the vicinity of White Plains Road and 224th Street—BMB territory—in possession of an unloaded .25 caliber firearm.

Rodriguez also has taken active steps to help a member of BMB avoid apprehension. On January 5, 2011, police saw BMB member Jafar Borden, a/k/a "Jaffy," trying to escape from the window of an apartment. Rodriguez was also present. When police approached, Rodriguez prevented the apprehension of Borden by force even after being warned that Borden had an outstanding warrant for a robbery.[2]

III. The Defendant's Criminal History

Rodriguez has a serious criminal history involving multiple weapons offenses.

On April 4, 2011, Rodriguez was adjudicated a youthful offender in connection with a robbery charge, for which he served approximately 41 months in jail.

On May 17, 2011, he was twice adjudicated a youthful offender in connection with a two weapons arrests, which led to a term of imprisonment served concurrently with the foregoing term.

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[2] The PSR, at paragraph 26, also references an arrest on September 23, 2009 for a robbery. This was not included in the Plea Agreement because the Government would not be able at this time to prove Rodriguez's participation in the robbery by a preponderance of the evidence, and the Government does not ask the Court to take the robbery into account at sentencing.

On December 6, 2011, Rodriguez sustained his first adult conviction—again, a weapons conviction, which led to yet another concurrent prison term with the two previously mentioned terms. During this offense, he was arrested with a .32 caliber loaded gun in the Bronx.

On December 21, 2016, Rodriguez pled guilty and received a $50 fine after he was seen selling marijuana in BMB territory.

IV. The PSR and Guidelines Calculation

The PSR calculates a different Guidelines range from the parties based upon a different calculation of Rodriguez's criminal history, which the Government is prepared to address upon inquiry of the Court. The parties stipulated to a range of 106 to 117 months' imprisonment, which includes a 60 month sentence that must run consecutively to any other term of imprisonment imposed.

3553(a) ARGUMENT

For the reasons that follow, a sentence within the stipulated Guidelines range is necessary to meet the statutory sentencing factors, in particular to provide just punishment, reflect Rodriguez's history and characteristics, and afford adequate deterrence to criminal conduct. Not only was Rodriguez a leader of BMB, but he also has an extremely troubling history of weapons offenses, including the possession of loaded guns—a scourge on society and the community BMB terrorized.

Rodriguez asks for the mandatory minimum sentence in this case, with no consecutive term of imprisonment for Count One. The Government does not dispute that, in *Dean* v. *United States*, 581 U.S. – (2017), the Supreme Court held that a sentencing court may consider the mandatory minimum sentence under Section 924(c) when calculating the proper sentence for a predicate offense. In this particular case, however, even under that holistic approach, the sentence Rodriguez requests is not insufficient to meet the statutory sentencing factors. Sixty months of imprisonment—a dramatic downward variance—would be insufficient to take into account Rodriguez's leadership role in the violent gang, not to mention his criminal history, which suggests that prior sanctions have not had any effect on Rodriguez's determination to commit crimes, including weapons offenses. A sentence within the stipulated Guidelines range is necessary to meet the statutory sentencing factors.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court impose a sentence within the range of 106 to 117 months.

Dated: New York, New York
April 19, 2017

Respectfully submitted,

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